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AIRLINE LIABILITY: LOST, DAMAGED OR DELAYED BAGS

PART I: DOMESTIC

BY RICHARD HARTZMAN

Delayed, damaged and even lost luggage is an all too frequent problem for meeting attendees.

And, in the event of a baggage problem, an airline is usually liable—both for lost or damaged articles and for the consequential and foreseeable expenses flowing from a loss, damage or delay. Moreover, though most airlines declare a limitation on liability, such a disclaimer is often found by the courts to be null and void.

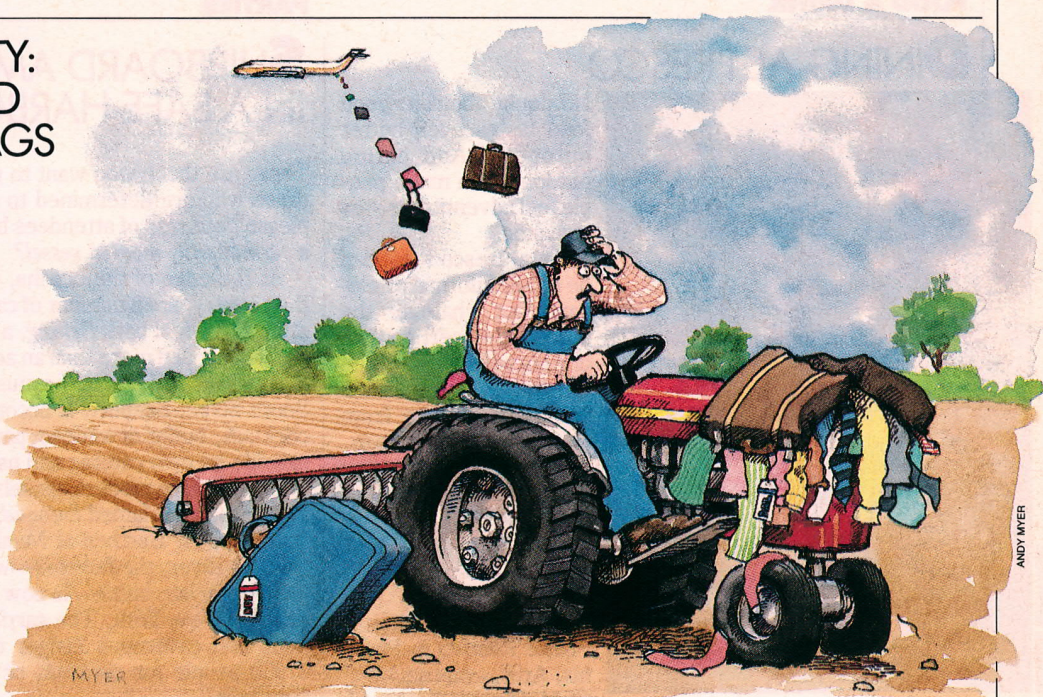
This month's column will focus on the law governing domestic air travel, as it pertains to luggage. The rules that apply to international flights—rules derived from the Warsaw Convention—will be covered in a future column.

Most air travelers expect compensation for lost or damaged luggage, at least within certain liability limits. But few know that airlines are also liable for additional expenses incurred when luggage is delayed.

In February, 1982, Dr. Lowell Daun was traveling via air to a dental seminar in Palm Springs, Calif. After he arrived, the airline informed him that his luggage had not been transported on the same flight. In order to accommodate a greater number of passengers without exceeding the legal load capacity, the carrier had had to limit the amount of luggage carried.

Airline personnel promised to deliver the luggage to Daun's hotel by 6:30 the next morning. When they failed to do so, Daun purchased the clothes necessary to attend his conference.

Subsequently, Daun sued the airline, charging that it had willingly and knowingly failed to transport his luggage so that the plane could accommodate additional passengers, and that it had failed to disclose this deceptive practice, in which case he might have been able to make alternative arrangements. The court awarded him \$864 in damages but re-



quired that he give the suit he had bought to the airline.

In another case, plaintiffs did not receive their luggage, which contained golfing equipment and clothing, until after their trip was completed. They had to purchase many items, including new golfing equipment; so they sued the airline for the cost of air travel, the cost of their tour package and for harassment and discomfort. They were awarded all out-of-pocket expenses and compensation for the reduced value of the trip.

LIMITATION OF LIABILITY

Under regulations in effect since 1983, airlines can limit their liability for lost, damaged or delayed luggage to \$1,250 for each passenger. For this limitation to be effective, however, the airline is required to give conspicuous written notice of the liability limitation on or with the ticket.

If adequate notice is not given—and there are many court decisions in which this has been ruled—the limitations will not apply.

And there are other situations where in liability limitations are often nullified by courts. They are considered legally waived if the loss, damage or delay stems from gross negligence or willful misconduct in the handling of the luggage. In addition, disclaimers of liability

are unenforceable if an airline refuses to give a passenger who requests it the option to purchase additional insurance to cover the higher value of the belongings entrusted to the airline.

Liability limitations also may be unenforceable when carry-on hand baggage is lost at an airport security check-in. This occurred in a lawsuit involving a baggage mix-up where the plaintiff grabbed a bag resembling his at the end of an x-ray security check. While the airplane was still on the ground with the door open, he realized his mistake and reported it to the departure agent, but his bag was never returned.

This lawsuit was brought in small claims court. For a great many luggage cases, where the damages are not excessive, but the airline does not give adequate compensation, the most sensible avenue is to sue in small claims court. Not only will the injured passenger avoid attorney's fees, but he or she will obtain a much quicker decision. However, if a substantial amount of damages may be involved or there are questions about liability disclaimers, it is best to seek the advice of counsel. ■

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M&C urges meeting planners to send in questions and experiences that relate to the law and their profession.